

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

GAVIN HOWARD,
Petitioner,

v.

JORDAN POWELL, et al.,
Respondents.

7:23-cv-1346-CLM-GMB

MEMORANDUM OPINION

The magistrate judge has entered a report (doc. 19), recommending that the court dismiss Petitioner Gavin Howard's petition for writ of habeas corpus (doc. 1) without prejudice. No objections have been filed.¹

After considering the record, including the magistrate judge's report, the court **ADOPTS** the report and **ACCEPTS** the recommendation. Consistent with that recommendation, the court will **DISMISS** Howard's petition for writ of habeas corpus **WITHOUT PREJUDICE** because his claims are unexhausted.

The court may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make such a showing, a "petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), or that "the issues presented were adequate to deserve encouragement to proceed further," *Miller-EL v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotations omitted). The court finds that the petitioner's claims do not satisfy either standard, so the court will not issue a certificate of appealability.

¹ After the magistrate judge entered his report, Howard requested discovery for documents related to his state court case (doc. 20). Howard has not objected to the magistrate judge's determination that the court should dismiss his petition without prejudice because his claims are unexhausted. (See Doc. 19). So the court **DENIES** Howard's request for discovery (doc. 20).

The court will enter a separate order that carries out this ruling and closes this case.

Done on April 16, 2024.



Corey L. Maze
COREY L. MAZE
UNITED STATES DISTRICT JUDGE